

November 10, 1954

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MINUTES of the forty-third meeting of the Directors of the Manufacturing Chemists' Association, Inc., held at The Union Club, Park Avenue and 69th Street, New York, New York, on November 9, 1954, at 11:00 a. m. (EST).

There were present:

Messrs.

E. T. Asplundh	J. J. Kerrigan
V. G. Bartram	R. C. McCurdy
Howard S. Bunn	Charles S. Munson
J. Clarke Cassidy	Ernest W. Reid
Leland I. Doan	John A. Sargent
F. J. Emmerich	George M. Walker
A. E. Forster	William H. Ward
William C. Foster	Rothe Weigel
John L. Gillis	J. Albert Woods
R. K. Gottshall	M. F. Crass, Jr.

Alternates:

M. Y. Seaton (for Paul L. Davies)
William Engs (for Hans Stauffer)

Present by Invitation:

Henry Bower, President - Henry Bower
Chemical Manufacturing Co.
J. W. Crosby, President - Thiokol
Chemical Corporation
Fred Singer - E. I. du Pont de Nemours
& Co., Inc. (Chairman, MCA Tariff
Committee)
Marx Leva - Fowler, Leva, Hawes &
Symington

I. GUESTS.

On behalf of those present, Chairman Emmerich extended a cordial welcome to the guests who were present by invitation.

II. MINUTES OF MEETING.

The minutes of the October 12, 1954, meeting were duly approved as sent to the members.

CMA 067191

III. TREASURER'S REPORT.

(a) Financial Summary. The financial summary for the period October 1 - 31, 1954, was reviewed, and

ON MOTION duly made and seconded, it was

VOTED: That the report be accepted and placed on file.

The Treasurer reported that one member had not yet paid his dues for the current fiscal year.

IV. PRESIDENT'S REPORT.

(a) ILO Chemical Employer's Meeting. Mr. Foster presented a summarized report on the Chemical Industry Employers' meeting, International Labor Organization, which was held at Wiesbaden, West Germany on October 22. Supplemental conferences were held in London, Brussels, and Frankfurt. The President also addressed the American Club in Paris on the subject of peacetime uses of atomic energy. It was emphasized that considerable good could come out of active participation in such conferences. The spring 1955 meeting of the Employers' Group will be held in Basle during May.

The next full-dress chemical meeting of the ILO, with Government, labor and employer representatives in attendance will be held in Geneva on February 6 - 19, 1955. The National Association of Manufacturers, acting in behalf of the Government, has requested MCA to nominate two official chemical industry employer representatives who will receive travel and per diem allowances from the Government. Additional nominations may be submitted if desired covering consultants or advisers, whose expenses must be borne by the individual. Following discussion, three names were suggested--Messrs. H. R. Huston, H. W. Johnstone, and E. W. Dwyer. Following clearance with the respective companies, it was suggested that the President select two of these gentlemen to serve as official delegates with the third to act in an advisory capacity.

(b) Chemical Progress Week. Following recommendation by the Public Relations Advisory Committee, and affirmation by the Chairman of the Public Relations Policy Committee and MCA staff, the week of May 16 - 21 has been selected for 1955 Chemical Progress Week. On motion duly made and seconded, it was unanimously voted that the Board of Directors act again as sponsoring body for Chemical Progress Week during the above period.

(c) Welch Foundation. In response to a request received from the Trustees of the Welch Foundation that the Association suggest the names of qualified individuals who might be considered for the executive directorship of the Foundation, a panel of six names has been submitted.

(d) Office of Defense Mobilization - Executive Manpower Reserve. Beginning December 1, a group of fifty industry executives will begin their indoctrination period in Washington. This is a pilot operation and ODM hopes that other defense agencies will cooperate in order that one pool may be maintained. A full report will be sent shortly to Board members. (*Attached hereto*).

(e) Transportation Symposium. A report was made on the October 13 MCA-sponsored Symposium on the Transportation, Packaging and Labeling of Chemicals held in conjunction with the 8th National Chemical Exposition in Chicago. This meeting was quite successful but suffered from the poor facilities and acoustics of the assembly hall.

(f) International Trade Fairs. The Association has received a request from Secretary of Commerce Weeks that the Association publicize to its members the 1954-55 program of International Trade Fairs. This will be handled in an early issue of the General Bulletin.

(g) French Licensing Tax. A tax, imposed by the French Government, on royalties or licensing fees paid in dollars, was discussed. It was reported that the French Government intends to collect this tax, not only currently and for the future, but also for prior years. It was suggested that the matter be made known to the Association membership and that interested firms contact the American Embassy direct or through the Association. Attached to these Minutes is a detailed description of the matter, received by the Washington office following the Board meeting.

V. BOARD OF DIRECTORS.

(a) Report on Alternates. The Chairman advised that the following Board members had requested the appointment of the following alternates:

Board Member

Alternate and Company

Hans Stauffer

William Engs, Assistant to the President,
Stauffer Chemical Company

William H. Ward

Walter Dannenbaum, Vice President,
E. I. du Pont de Nemours & Co., Inc.

ON MOTION duly made and seconded, it was

VOTED: That the appointments be approved.

(b) Membership Committee.

(1) New Applications. It was reported that the following applications for membership in the Association have been received:

Archer-Daniels-Midland Company
The Atlantic Refining Company, Inc.

and that the applications were duly sponsored and seconded by executives of member firms, and that the applicants appear to be qualified for membership under the Association's By-Laws.

ON MOTION duly made and seconded, it was

VOTED: That the applications be approved subject to the 30-day notice to members provided under Article III, Section 4, of the By-Laws.

(2) Prospective Members. Mr. Kerrigan referred to his recent letter to Board members on the subject of membership prospects. He will summarize and tabulate replies and, by the time of the next meeting, will assign specific prospects to Board members for contact and follow-up.

VI. COMMITTEES.

(a) International Trade and Tariff.

(1) The appointment of Mr. Harris Green, Rohm and Haas Company, replacing D. F. Murphy, was approved.

(2) Customs Tariff Classification Study.
Mr. Fred G. Singer, Chairman, International Trade and Tariff Committee, addressed those present concerning the Customs Tariff Classification Study

recently instituted by the Tariff Commission following enactment by the 83rd Congress of H. R. 10009 (Public Law 768). Object of the study will be to bring the tariff schedules which were written in conjunction with the Tariff Act of 1930 up to date and to simplify the schedules and classifications wherever possible. This project is of substantial importance to the chemical industry.

At a recent meeting of the MCA Committee, Mr. Singer was authorized to appear before the Board of Directors and to invite consideration of two points:

a. That a special Subcommittee of the IT & T Committee be appointed to map out and supervise an MCA study of all chemical paragraphs in the Tariff Act with the exception of those relating to synthetic organic chemicals which will be studied by SOCMA. Working under the Subcommittee will be individual task groups selected from interested firms for each paragraph or classification to be undertaken in the study;

b. That a qualified consultant, familiar with Customs Bureau and Tariff Commission personnel and procedure, be retained to provide knowledge and advice as well as ultimate contact and follow-through with the Tariff Commission following completion of the MCA study and report.

With reference to item b above, Mr. Singer recommended that Dr. John L. Coulter, a Washington economist with a distinguished background in the fields of customs, tariffs, education, and statistics be retained.

Following discussion, it was MOVED, SECONDED and UNANIMOUSLY VOTED:

1. That the special subcommittee and its projected task force organization be approved.

2. That the services of Dr. Coulter be retained for a period not exceeding one year, with remuneration of not more than \$15,000 for that period plus expenses; Dr. Coulter to act as consultant to the Association and to report through the Washington office staff.

A complete resumé of Mr. Singer's presentation is attached to these Minutes as a special supplement.

(b) Plastics - Plastics in Building Conference. The Washington Conference on Plastics in Building, held October 27 and 28 sponsored jointly by MCA, National Research Council, and the Society of the Plastics Industry was a most successful undertaking. Approximately 530 registrants were present and much favorable publicity resulted.

(c) Water Pollution Abatement. A brief report was made on plans for the New England Workshop Conference to be held in Boston on November 17. Approximately 30 member representatives, mostly at the plant level, will attend this conference and will discuss their immediate water pollution problems with a panel of experts selected from Water Pollution Abatement Committee personnel. A second regional conference covering the Northern New Jersey, Southern New York and Eastern Pennsylvania area has been tentatively scheduled during the month of February, 1955.

VII. MISCELLANEOUS.

(a) 1954 Mid-Year Meeting. Program has been finalized for this meeting and the banquet speaker will be Secretary of the Interior Douglas McKay. Those present were handed copies of the tentative printed program outlining panel subjects and miscellaneous events. Since ample space will be available, those present were urged to send large delegations to the meeting from their senior executive, junior executive, and staff personnel.

(b) Research Project. The Secretary discussed the tentative contact between MCA and the Carnegie Institute of Technology which has now been reviewed and approved by the Research Advisory Committee, its task subcommittee, and counsel. Authorization was granted for the signing of such contract on the basis of a 19-months' commitment. With reference to current financing, it was reported that approximately one-half of the Association's members had signified willingness to cooperate and that only four refusals had been received.

(c) Association of Canadian Chemical Manufacturers. Mr. Bartram reported that a charter had been granted by the Canadian Government to this group; that approximately 15 members had been signed up to date; and that an ultimate membership of approximately 40 to 50 was envisaged. A meeting to be held during December will probably confirm the appointment of a full-time secretary and the setting up of a headquarters office in Ottawa. Mr. Bartram stated that the new group, while not affiliated with MCA, hoped to keep in close touch with MCA.

(d) Government Questionnaires and Reports. The Secretary reported that a chemical task group, formed at the request of the Hoover Commission on Organization of the Executive Branch of the Government, had held a meeting in Washington recently to investigate the paperwork problem as it affected the chemical industry. A final meeting of the group will be held during early December, at which time a report, with recommendations, will be turned over to the Federal Government.

(e) Industry-Government Conference. Success of the December 14, 1953, luncheon in Washington, arranged by MCA and attended by high government and industry officials, has prompted a suggestion that a similar affair be arranged this winter. Following discussion, it was agreed that such event be scheduled for February 8, 1955; that the event take the form of a reception from 5:00 p.m. to 7:00 p.m.; that members of specific Congressional Committees as well as high government executives be invited; that invitations be extended to the executive contacts of member firms and their executive associates; and that the February meeting of the Board of Directors be arranged at 11:00 a.m. on that date in Washington.

There being no further business to come before the meeting, it was unanimously resolved to adjourn.

M. F. Crass, Jr.
Secretary

Approved: F. J. Emmerich
Chairman

During the luncheon period, the Board had as its guests the following:

Dr. H. Stork, Verband des Chemische Industrie - Germany
Mr. Henri A. Abt, Federation of German Industry - New York
Mr. K. H. Hannan, Member, MCA Finance Committee
Mr. C. A. Kline, Jr., Member, MCA Finance Committee
Mr. L. C. Perkinson, Member, MCA Finance Committee

SPECIAL SUPPLEMENT TO BOARD OF DIRECTORS' MINUTES
OF NOVEMBER 9, 1954

Report by Mr. Fred G. Singer, Chairman, International Trade and Tariff Committee [Material in brackets reflects views expressed and action taken at the meeting of the Board of Directors]:

This report and the recommendations made in it are brought about by the Customs Simplification Act of 1954, Public Law 768, 83rd Congress, approved on September 1, 1954.

This Act instructs the U.S. Tariff Commission to proceed with the complete study of the classification, for tariff purposes, in the various schedules of the Tariff Act of 1930, of commodities, including the dutiable and free lists, the related special provisions of the Tariff Act, the provisions of the Internal Revenue Code relating to import taxes and other laws. So that each Officer and Director of the MCA present may understand what is involved in this Title I of the Act, I am going to read Section 101 (a) of Title I because the words used in the text are quite clear:

"Sec. 101 (a) The United States Tariff Commission shall proceed promptly to make a complete study of all provisions of the customs laws of the United States under which imported articles may be classified for tariff purposes, including the dutiable and free lists and related special provisions of the Tariff Act of 1930, as amended and as modified, the provisions of the Internal Revenue Code relating to the duties designated as import taxes, as amended and as modified, and other laws. The Commission shall compile a revision and consolidation of such provisions of the customs laws which, in the judgment of the Commission, will accomplish to the extent practicable the following purposes:

- (1) Establish schedules of tariff classifications which will be logical in arrangement and terminology and adapted to the changes which have occurred since 1930 in the character and importance of articles produced in and imported into the United States and in the markets in which they are sold.
- (2) Eliminate anomalies and illogical results in the classification of articles.
- (3) Simplify the determination and application of tariff classifications."

In regard to sub-section (b) of that Section, the Commission is instructed to seek to accomplish the purposes, without suggesting changes in any rate or rates of duty on individual products, whether those rates are applied by statute or by Presidential Proclamation. (This differentiation between customs rates is important.) Where the purposes cannot be accomplished without a change in rate, up or down, the Commission is to specify each incidental change which it recommends and accompany it with a summary of all data on which such suggested change was based, together with a statement of the probable effect of such suggested change on any industry in the United States. Before suggesting any changes in rates of duty, the Commission shall give public notice of its intention and afford opportunity for parties interested to produce evidence and to be heard at public hearing.

According to sub-section (c), the study and recommendations are to be completed not later than September 1, 1956, but sub-section (d) states that on or before March 15, 1955, the Commission is to make an Interim Report on (1) - the progress that has been made to that date, (2) - the significant complexities of tariff classification that have developed, and (3) - suggestions as to standards and methods which might be adopted for a simplification of existing tariff schedules.

As you see, two subjects are involved in this study. (1) - the modernization of the 1930 schedules, and (2) - the more complicated question of simplifying the determination and application of tariff classification. The first subject is the most urgent and on which the Tariff Commission has asked for prompt assistance from Industry. The second one will have to be kept constantly in mind, since a final report to the Tariff Commission should include ideas regarding simplification.

As you know, the chemical schedules are a complicated affair, and it is most important that the chemical industry cooperate closely with the Tariff Commission in its work on our products.

This problem requires careful analytical consideration:

to modernize (Commodity classifications not been studied since adoption Tariff Act of 1930);

to correct anomalies and illogical results of classifications by Customs Bureau decisions and Court rulings;

to classify products logically and correctly according to their value basis in the chain of processing operations towards the end product.

At its last meeting on October 7th, your International Trade and Tariff Committee recommended unanimously that the MCA take an active role in cooperating with the U.S. Tariff Commission on behalf of the industry as a whole, that is, for members and non-members of the MCA.

I understand that the Board of Directors at its meeting in Chicago approved the Committee's recommendation that I be invited to attend today's meeting in order that I might outline the action which the Committee feels that MCA should take -- including the following:

- (a) Setting up a subcommittee of the International Trade and Tariff Committee, (1) - to undertake the necessary studies of all chemical classifications affecting the interests of MCA membership, except for those items of synthetic organic chemicals which are included in the study already started by the SOCMA;
- (2) - to cooperate closely with the U.S. Tariff Commission;
- (3) - to act as counsel, on subjects within the scope of MCA activities, to those individual companies or organizations which may deem it advisable to make individual presentations on particular products at Tariff Commission public hearings
After discussion, the Board agreed that MCA should not "act

as counsel" in individual cases -- especially since there will be instances where the objectives of an individual company may not represent the objectives of the industry as a whole⁷; and

(4) - to present such oral and written testimony on general subjects as may be deemed helpful to the industry, at Tariff Commission hearings.

- (b) Authorize the Chairman of the International Trade and Tariff Committee to seek and recommend to the Board of Directors an individual to head up the new subcommittee to act as the main contact with the Tariff Commission; to collect, through specially designated task force groups, the recommendations of the technical experts; to modify these from the point of view of customs administration, procedures and practice; present the end result to the Tariff Commission in proper legislative terminology and accompanied by a statement of purpose or intent; and, finally, to present or organize testimony to the Tariff Commission. ⁷After discussion, the Board agreed that authorization should be granted for the employment of an outside consultant, but it was also agreed that such consultant should not be the head of the subcommittee, but should instead work for and with the full Committee, the subcommittee, and the MCA staff.⁷
- (c) Requesting the Chairman of the International Trade and Tariff Committee to report to the Board on (b) above and his recommendation for the creation and organization of the special subcommittee.
- (d) To obtain authorization to proceed on whatever basis the Board approves.

Report:

If the Board instructs the International Trade and Tariff Committee to organize the special subcommittee, it is my recommendation that it be headed up by an individual who: is familiar with the past studies on customs classification which represent a tremendous backlog of work on logical classification; is able to determine what is required for modernization, without revolutionary suggestions which might create excessive pressures to rewrite the entire Tariff Act; is thoroughly familiar with the problems of collecting, collating, and interpreting statistical data; is an economist; is familiar with Tariff Commission work and is persona grata to the Commission; is reasonably familiar with Customs Bureau procedures, and with legislative and regulatory terminology.

I should further recommend that the "Chairman" of the subcommittee ⁷see Board discussion on this point, already set out above⁷ be surrounded by a small general staff of individuals chosen from our member companies, subject to the latter's approval and consent that these individuals be assigned part-time to this job. Off-hand, I should suggest three or four individuals. The facilities of the MCA staff to be placed at the disposal of this general staff.

I wish to state that my terminology to designate the groups in this set-up is not final. I am endeavoring to make my suggestion clear to you, but the mechanics to bring the subcommittee into existence under MCA procedure will be discussed with the President and Secretary before any action is taken.

The Chairman of the International Trade and Tariff Committee to be in constant and intimate contact with the Chairman of the new subcommittee so that the latter may, in the interest of time, report direct to the President of the MCA for clearance before any action is taken in the name of the MCA.

The general staff's duties are to advise the individual heading the task groups for a designated customs tariff classification paragraph or group of commodities on the general approach to the problem of classification and make him aware of the existing pitfalls in the terminology of the present Act and regulations; also to give counsel as to the methods of collecting and presenting the tabulated material for submittal to the general staff.

One individual to be chosen from among executives of our member companies, subject to the latter's approval and consent, that the individual be assigned to undertake this duty, for each paragraph or related paragraphs of the Tariff schedules involved, for the collection and collating of the suggestions of all producers, whether members of the MCA or not, and without duplicating the work being done by other associations, which is considered satisfactory by the interested parties.

The head of the task group to seek advice from and report to the general staff.

The head of the task group to be free to solicit and obtain the cooperation from other member companies of MCA, as he deems necessary to accomplish his mission.

That would be the broad organization of the new subcommittee.

In regard to the request that I submit a recommendation for the name of an individual to act as Chairman of the subcommittee, I do not know of anyone in our industry who meets the requirements I have set forth. The Board agreed, as noted above, that an outside consultant be employed, but the Board did not agree that the consultant serve as Chairman of the subcommittee. I have concluded that I must recommend we look outside of our membership and association staff for such an individual. I have done so, and, after careful thought, I should like to recommend that we secure the services of Dr. John Lee Coulter of Washington, D. C. In my opinion, all our requirements point to him, and I cannot think of anybody who fits the bill more perfectly.

I have prepared, and I give to each one of you, a biographical sketch of Dr. Coulter's career (copy attached). It is impossible for me at this moment, and it was impossible for the Chairman of the U. S. Tariff Commission to help me on this, to state concisely what amount of work would be required of Dr. Coulter. The study is not sufficiently advanced to permit a precise evaluation of that point. It is probably not until after the publication of the Interim Report that we shall be able to appreciate the further work to be done, beyond the preparation of the initial report. I should hesitate very much to recommend the use of Dr. Coulter's services for a short period,

thereby risking to lose him at some later moment when we might need him most. I should, therefore, like to recommend that you authorize me to make an arrangement with Dr. Coulter on the basis of his part-time availability to us for one year. I believe I could arrange this on the basis of a retainer not exceeding \$15,000. On the other hand, you might prefer to limit this to the fiscal year of the MCA, which closes on May 31st of each year. By that time next year, which would be after the publication of the Interim Report, we might know more clearly what the further work involves and then make another arrangement with Dr. Coulter for the continuance of his services.

Respectfully submitted,

/s/ Fred G. Singer

Fred G. Singer,
Chairman

MCA International Trade and Tariff Committee

MEMORANDUM CONCERNING THE APPLICATION OF FRENCH TURNOVER
TAXES TO ROYALTIES PAID BY FRENCH LICENSEES TO FOREIGN LICENSORS

French turnover taxes, which are in the nature of sales taxes imposed on the seller, apply not only to sales of goods, but also to the furnishing of services. The recent French fiscal reform, adopted early in 1954, made more definite the nature of services which will be considered as having been rendered in France and therefore as being taxable.

Under French law, the licensing of patents, trademarks and secret processes has always been considered as the rendering of services, and the royalties paid therefor have always been subject to the tax on "prestations de services"; this has been generally recognized in the past where both the licensor and the licensee were French. The problems in the past have arisen when one of the parties was a foreigner, the question being whether or not the services, which consisted of the licensing of the patent, trademark or secret process, were or were not to be considered as being rendered in France, and thus taxable. For the most part, foreign licensors which had no branch office in France seem either to have been ignorant of the existence of this tax or to have assumed that they were not liable for its payment, and the French tax authorities evidently made no effort to assess or collect the tax in such cases. Recently, however, the French authorities have presented a large number of American companies with tax bills, and there is now a great deal of ferment, both between the American and French Governments and between American private companies who have received such bills and the French tax authorities; the nationals of various other countries and their governments are also involved in similar problems with the French authorities.

The French Government now takes the position that, regardless of the nationality of the licensor of a patent, trademark or secret process, and regardless of whether the licensor has an establishment in France, the royalties paid for such license are taxable if the license is exploited in France. Many American companies who had assumed that they were protected against such tax liability by the Franco-American treaty to prevent double taxation, have learned that taxes are excluded from its field of application. Therefore, the question of whether or not an American company is liable to pay the tax is one wholly of French law, which provides that the tax is payable on all services rendered in France.

In the past, there has been some doubt as to whether the licensing of patents, trademarks or secret processes to be exploited in France was properly considered services rendered in France. However, under the new tax law, which became effective July 1, 1954, there can no longer be any doubt about this; the new law makes it altogether clear that, regardless of the residence or nationality of the licensor or the place where the license agreement is executed, royalties paid for a license for a patent, trademark or secret process to be exploited in France are taxable. If the foreign company has no establishment in France, the government will serve a tax assessment on it abroad through the French consul. If a foreign licensor does not pay the tax, the French Government proposes to collect the tax by attaching the royalties payable by the French licensee. With respect to the past, moreover, the French Government takes the position that the wording in the new legislation did not change the law but simply expressed more clearly what the law has always provided; hence the present collection efforts relate to back tax claims for the full three-year limitation period.

Insofar as rates are concerned, the furnishing of services is taxed at a total rate of only about 9%, whereas the sale of goods is taxed at a rate of about 17%. Actually, however, the incidence of these taxes is even higher, since the foregoing rates are calculated on the basis of the sales price or service fee including taxes, so that, for example, the incidence of the turnover tax on the sale of goods amounts really to about 21% of the sales price before taxes.

The determination of the French Government to impose this tax on American recipients of royalty income from France, both with respect to future royalty payments and payments made in the past, has led many companies to re-examine the situation carefully. With respect to both the past and present there seem to be certain possible solutions, or at least measures to reduce the impact of the tax, either under French law itself, or through intergovernmental negotiations between France and the United States.

One of the possible solutions provided by French law is for the American licensing company to establish that it is itself the inventor of the licensed patent or trademark. (It is not entirely clear whether this same solution will be applicable if the thing licensed is unpatented know-how.) This possibility exists because of the nature of the French turnover taxes, of which the tax on "prestations de services" is one. The turnover taxes are applicable only to "commercial" operations. Persons who exploit patents, trademarks or secret processes are generally considered to be conducting commercial operations. However, an exception is made in the case of a person who is himself the inventor of the patent, trademark or process. The business operations of an inventor are considered, under French tax law, to be "non-commercial". Therefore, when the licensor is himself the inventor of the licensed patent, trademark or process, he is not liable to pay the tax on "prestations de services" on the royalties which he receives. This would be true regardless of whether the inventor were French or foreign. The problem in this respect is one of proof; that is, the burden of proof is on the licensor to show that he is in fact the inventor of the patented invention, trademark or process, rather than having acquired it from the person who originally invented it. In the case of an individual licensor, if he is in fact himself the inventor, this proof is generally fairly easy to make. For instance, in the case of a patented invention or registered trademark, it would probably be sufficient to show that the patent or trademark was originally registered in the name of the licensor.

The question of proof of inventor status is somewhat more difficult when the licensor is not an individual, but a company. French law recognizes that a company may itself be an inventor. For instance, a company which holds a patented invention, invented by one of its own employees whose very job was the making of such an invention, would be recognized under French tax law as the inventor. Nevertheless, in the past, the French tax authorities have made it a practice to refuse to recognize foreign companies as inventors, on the ground that they had no way of verifying the proof offered that the company was in fact itself the inventor. The tax authorities have even gone so far as to say that they would categorically refuse to permit a foreign company to offer proof that it was the inventor and thus secure inventor status for tax purposes. However, very recently, in a case involving the Jantzen bathing suit trademark, a French court allowed the inventor exemption to the Jantzen Company, which would indicate that the courts will not necessarily uphold the tax authorities in refusing to allow a foreign company to show its inventor status if the foreign company can, in fact, offer adequate proof of such status. It is, however, to be noted that this court decision is not conclusive, because it was rendered by a lower court and will probably be appealed, and also because

the court which rendered the decision was in the Department of the Aube, and it might very well not be followed by a court in Paris where most such cases would probably be tried.

In view of the uncertainty as to whether the courts will allow admission of proof of inventor status for foreign companies despite the objections of the tax authorities, there are a number of ways in which the French Government could, in fact, verify the claims to inventor status made by American licensors, thus obviating the distinction made on this point between French and foreign companies. Among these are the following:

- a) Statements or opinions rendered to the French Government, at the cost of the licensing company, by certified public accountants or lawyers, confirming the statements made by the licensing company as to its inventor status;
- b) Investigation by French consular officials in the United States, including if necessary examination of the books and records of the licensing company. (It can be pointed out that this would be comparable to the activity of American consular officials abroad in verifying the "foreign value" for customs purposes of goods imported into the United States.);
- c) Verifications made by American Federal tax officials and communicated to the French tax authorities. In this connection it can be pointed out that the present Franco-American Tax Treaty, while it relates only to income taxes and not to turnover taxes, includes provisions for the mutual rendering of assistance by the tax authorities of the respective countries, and that the verification of inventor status could be effected in the same spirit.

Those French officials to whom these suggestions have been made have indicated that they might be receptive to the foregoing suggestions, but feel that they should be made officially in the form of proposals contained in a Note transmitted by the American Government to the French Government through diplomatic channels. This has been discussed with officials of the United States Embassy in Paris and officials of the United States Treasury Department in Washington, and they seem favorably inclined to the possibility of such official intervention. It is thought that any agreement reached in this respect between the two governments might perhaps be made the subject of an exchange of letters to accompany the new revised Franco-American Tax Treaty which is expected to be forthcoming soon, even though not contained in the treaty itself for the reasons discussed below.

If the French Government, should, either because of the insistence of its courts or because of a change in the present position of the French tax authorities, agree to accept proof of inventor status from American companies, the problem of these turnover taxes on services would be solved, both for the past and for the future, to the extent that the taxpayer was in a position to establish that he was in fact the inventor. For companies which cannot establish such inventor status, other solutions must be sought.

For companies not having inventor status, or if the attempts to convince the French tax authorities to allow foreign companies to prove inventor status should fail, there are other possible solutions. With respect to taxes due for the past, the only solution would seem to lie in the discretion of the French Government. There exists

a French tax regulation of some 26 years' standing to the effect that the tax authorities have the discretionary right to waive back taxes (1) where the failure to pay the taxes resulted from a mistake made in good faith, (2) where the tax administration itself contributed to such mistake, and (3) where the tax would be a burden on the taxpayer which, if the mistake had not been made and the tax had been paid when due, would not have existed. The case of American licensors with respect to the back turnover tax claims seems to meet the conditions for the exercise of this discretionary power. While French regulations for many years have technically made royalties paid to foreign companies by French licensees subject to French turnover taxes, the French Government has never made any effort during all that time to collect such taxes or to advise any such licensors of such tax liability. As a result, American licensors, and in fact almost everybody in France including the tax authorities themselves, have assumed that such taxes were not due. This, it can be argued, is a mistake in good faith shared in and contributed to by the French tax authorities. If American licensors had known that the tax was due, they could have relieved themselves of the burden in several ways. They might have increased the royalty payments required to be made to them, so as to cover the amount of the tax, or they might have provided in their license agreements, as some companies have in any case always done, that any French taxes imposed with respect to the royalty payments would be borne by the French licensee, or they might have passed the tax on to the French licensee in the manner provided for turnover taxes under French law. Under French law, these taxes are always passed on, so that eventually they are reflected as part of the price paid by the ultimate consumer. Thus, if the American licensor had known it was subject to the tax, it might have, as permitted under French law, entirely apart from any terms of the license agreement, separately billed the licensee for the amount of the tax, and the licensee would have included that tax in his sales price. This problem also has been discussed preliminarily with French tax officials, and they seem to recognize the possible inequity of the present claims for back taxes and the possible applicability of this long-standing French regulation designed to relieve just such inequities. However, for this problem too, they have suggested that a request for relief should best come in the form of an official Note from the American Government to the French Government through diplomatic channels.

In the case of companies not in an inventor status, or if the efforts to induce French tax authorities to allow introduction of proof of inventor status for foreign companies should fail, there is also some possible relief under French law with respect to future taxes. The new tax legislation passed during the current year, which is considered to be a substantial reform of the French tax system, has had a number of effects on the turnover tax system. What was formerly called the "production tax" is now called the "tax-on-value-added". While it remains the same in many respects, the most important change is in the manner in which it is passed on from the primary supplier through the various transactions until the product reaches the final consumer. Previously, the "production tax" was imposed on every transaction from one "producer" to another, without allowing adequate credit to any of them for the tax previously paid, so that the price to the consumer bore the burden of this multiple taxation. The value-added tax, or TVA as it is known, is intended to relieve this problem. Under the new system, each "producer" (meaning in effect a person who manufactures a product) who is subject to the tax on sales made by him to his customers may credit against such tax liability any amounts billed to him by his suppliers for such tax. This new provision came into effect in July of this year, but only with respect to the sale of goods. However, as of January 1, 1955, the same credit provisions will be applicable to the

tax on services. Thus, if after that date the foreign licensor acknowledges that it is in fact subject to the tax, invoices the French licensee for the royalty plus the tax (showing the tax separately on the invoice) and makes the tax payment in that amount to the French tax authorities, the French licensee will probably then be able to credit the major part of that amount of tax paid by him to his licensor against the amount of TVA tax which the licensee will himself have to pay on further sales made by it to his customers. In this procedure, however, there are a number of complications which require careful study of each individual case in order to get the maximum tax relief and also to avoid damaging the licensor's position with respect to any claim by the French Government for back taxes.

The recent attempts by the French Government for the first time to collect this tax from foreign companies has caused quite a stir in the United States and elsewhere. The Swiss and Swedish Governments also are trying to make a concerted attack on the problem. Similarly, a proposed amendment to the Franco-American Tax Treaty is now being held up because of efforts by the American Government to have included in it some provision to relieve American companies of this tax burden, while the French have refused to expand the scope of the treaty so as to include this tax. It is understood from discussions in Washington and Paris that the French Government intends to remain adamant on this point, and refuses to consider any inclusion of turnover taxes in the Franco-American Tax Treaty for the Avoidance of Double Taxation. It takes the position that the theory of such tax treaties is based on reciprocity and that, since American law imposes no Federal tax comparable to the French turnover tax, there is no basis for mutual concessions which would permit the French Government to justify the inclusion of turnover taxes in such a treaty.

This problem is already a "cause celebre" since it touches so many American and other foreign companies, many of which do not yet know that the problem exists. Some American officials have expressed the opinion that the French position is contrary to the spirit, if not the letter, of the existing tax treaty and violates the basic principle which frowns on the extraterritorial application of a tax. There is some feeling, however, among those members of the American business community who are aware of the problem, that the American Government should make an even greater effort to obtain some kind of relief for the American companies affected.

There has been some indication from Treasury Department officials in Washington that they would be prepared to make further official overtures of some kind to the French Government. It would appear that every effort should be made to induce the United States Government to make such overtures with respect to (a) the acceptance of proof of inventor status and (b) the waiver of taxes for the past.

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CMA 067207

EXECUTIVE OFFICE OF THE PRESIDENT
OFFICE OF DEFENSE MOBILIZATION

O.D.M. PILOT PROGRAM

Recruitment and Maintenance During Peacetime of a Nucleus
of Non-Government Personnel for Executive Positions
in Government During Periods of Emergency

November 2, 1954

CMA 067208

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Recruitment and Maintenance During Peacetime of a Nucleus
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I. INTRODUCTION

The Office of Defense Mobilization is establishing a nucleus Executive Reserve, to augment existing personnel, for government mobilization positions in periods of national emergency. This reserve will be organized and ready for call on a voluntary basis to do the job government must do with civilian staffs. This reserve, although operated on a voluntary basis, will be in a sense similar to the military reserve organized and available for call on short notice. Heretofore personnel needs of the Federal Government during a period of all-out or high-level mobilization had to be handled on a "crash" basis. Inherent in this process was an excessive time lag in developing effective organizations. Developments in military technology and the greatly enhanced capabilities of enemy attack on the continental United States make it urgently necessary that a systematic program for executive recruitment be established in advance of need with the cooperation of industrial and business organizations, colleges, trade associations, farm organizations, labor unions, and other employers of executive personnel.

Initially the Office of Defense Mobilization will recruit approximately 50 people from outside of government generally between the ages of 35 and 55. These will be executives who can fill the middle and upper positions in production, stabilization, materials, telecommunications, manpower, and other defense agencies. This will be strictly a pilot operation, the number of people to be expanded to the extent necessary when sufficient experience has been attained. The Directors of major mobilization agencies

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will be outside the scope of this program since they will usually be personally selected by the President.

II. PROCEDURE

A. Preparation

The Office of Defense Mobilization has compiled a list of positions which on the basis of current planning will be needed in case of emergency. These positions have been broadly catalogued in terms of specifications for key activities.

For example: In the Materials Area, three Assistant Administrators will be needed as follows: One each for Chemicals and Rubber, Forest Products, and Metals and Minerals. Each of these three men will be a key executive from one of the industrial firms dealing on a broad front with these areas. He must have a wide knowledge of industry problems instead of primarily a detailed technical or scientific knowledge of a restricted commodity area. He should have a broad knowledge of domestic and foreign interests in materials for which he will have the responsibility.

Reporting to these three Assistant Administrators will be Directors of 17 Commodity Divisions.

For example: Organic Chemicals, Lumber, or Iron and Steel.

These men should have a more specific knowledge of the major uses of the materials involved and a detailed understanding of the sources of production as well as methods of distribution.

B. Recruitment

In recruiting his Executive Reserve the present area head in ODM will use the following general procedure:

1. Establish the field in private employment from which the individual reservist most logically should come. Carefully consider all available individuals who have had recent successful government experience from this field.

2. Contact the indicated trade associations or other organized groups for aid in establishing contacts with employers and in selling the necessity for and importance of the executive reserve.

3. Contact the proper top officials of each of the private organizations selected and determine by discussion of specifications what level of responsibility in their organization would call for qualifications that would be similar to the qualifications needed in a corresponding level in the government area involved.

(Any present member of such private organization who had rendered successful service to the government in this field could at this time be asked for specifically and even though he may for business or personal reasons not now be available, a discussion of the job from which he went into government and the job which he did for government might be mutually helpful in clarifying the executive experience and personal characteristics needed.)

4. Decide on a candidate who meets the general criteria and request the private organization to make him available to government on a voluntary basis in time of emergency and for immediate orientation and preparation.

5. Interview the individual to obtain his agreement to serve.

C. Orientation and Preparation

The basic objective of this program is to have immediately available to government a select nucleus of highly capable and experienced executives able to quickly shoulder responsibilities in their field. Shortly following his appointment to the reserve, the executive should come to Washington to participate in a short orientation program organized by his area head. (Reservists with previous mobilization experience will naturally require little orientation.) The following major topics should be emphasized in his initial orientation:

1. The Responsibility of Public Service. The reservist must keenly realize that in the event of call to active duty he will be a public servant and that any decision which he makes must be based entirely on the public interest. (There have been several good statements written on this subject which can be placed in a kit to be presented to each reservist.)

2. Government Organization. He should be briefed on the organizational functions of the government; how his department or agency will be organized in the event of full mobilization; how it will relate to other agencies; what its responsibility and authority will be.

3. Area Plans and Programs. Include discussion of the various mobilization plans and problems of the area as well as a review of current activities.

4. Position Specifics. The reservist should be briefed on the responsibility and authority of his indicated mobilization position

and some of the more specific problems and functions for which he will be responsible at the time of emergency.

5. Laws and Regulations Affecting Service. This will include an explanation of conflict of interest statutes, compensation, etc.

Certain phases of this orientation will be coordinated with other areas in order to obtain broader discussion and to give the reservist opportunity to become acquainted with both career people and reservists from other areas. Thus, particularly with the first reservists appointed, group training may be achieved. Later, as individuals are brought in due to attrition, training will necessarily be on a more individual basis. The duration of this initial training may well vary from area to area but generally should be executed in a matter of several days. During this period arrangements should be made for the reservists to meet members of the agency staff including the Director.

When feasible, each reservist will be associated with a designated member of the career staff. This relationship will facilitate training and will be particularly valuable to the reservist when he begins to function in time of emergency.

At least once each year following this initial appointment to the reserve, the executive should participate in additional meetings with his area head and staff to be brought up to date on current thinking and problems. These meetings, to be held either regionally or in Washington, would serve the added purpose of getting the reserve and career executives together as a team. The reservist should take part in war exercises or games where concrete problems will be posed. The area head will also maintain frequent contact by periodic bulletins, correspondence, and telephone, with his executive reserve,

the objective being to maintain as close a relationship as possible by keeping them informed and by obtaining their opinions on current mobilization plans.

III. COMPENSATION AND CONFLICT OF INTEREST

A. During Peacetime

1. No major problem is foreseen in connection with the peacetime service of the Executive Reserve since in peacetime he will not be called upon to make any substantive decisions. For the meetings outlined in II-C the reservists will serve on a "without compensation" basis with their employer continuing their salaries. The Government will be willing to pay their travel expenses and a per diem subsistence allowance.
2. Security clearance will be initiated for each executive reservist at time of his agreement to become a member of the Executive Reserve; official appointment will be made when clearance has been completed.

B. In Time of Emergency

1. When the executive reservist cannot serve the government on a salary basis, it is anticipated that authority to serve on a without-compensation basis will be available as presently provided for. The period of service under these conditions will be indefinite. Thus the reservist will remain on the roll of his company, college, or union, retaining all collateral benefits such as pensions, insurance, bonus, etc. to the ultimate advantage of his career and future security.

2. This program can be put into effect, and the conflict of interest problems resolved, on the basis of statutory and Executive Order exemptions similar to those now in effect pursuant to the Defense Production Act of 1950 and Executive Orders 10182, November 21, 1950, and 10205, January 16, 1951.

IV. ATTRITION

The Executive Reserve program must take into account continued preparedness which might be immediately needed but which could exist over a period of many years. This necessitates not only keeping the program alive but also a systematic means of replacing members of the reserve who for business or personal reasons become unavailable. Here again the responsibility falls squarely on the chief of each government area. However, it should be well understood by both the individual reservist and the private enterprise that the area head of the government agency should be notified as quickly as possible when it is foreseen that the reservist is no longer available. In some instances it may be entirely proper for the area head to seek the replacement in the same non-government organization making full use of the personal knowledge which the retiring reservist and the officials of that enterprise have of the individuals in their organization. In other instances it might be highly improper to have a succession of reservists from the same enterprise. In this case the area head should again obtain advice as to where to seek a replacement as outlined in II-A above. Thus over the years each area head will be able to keep his executive reserve active, and up to date.

V. CONTEMPLATED EXPANSION OF THE PILOT PLAN

To be successful the establishment of an Executive Reserve should not be organized agency by agency on a piecemeal basis. The pilot operation outlined above has been specifically prepared for the Office of Defense Mobilization but it is hoped that it can be expanded to include all other government agencies. The total executive need for government should be consolidated and an official Executive Reserve established by statute followed by an Executive Order, in which the coordinating agency is designated.

This presupposes wholehearted acceptance and cooperation at the Cabinet level. In order to put such a plan into effect for all of Government there must be a maximum cooperation and pooling of interest of all the Executive Departments of the Government to establish realistic objectives as to the number of executives needed and to coordinate recruitment activities. This coordination should assure that when any private enterprise is approached to obtain members for the executive reserve, reasonable assurance can be given that although other agencies may approach this same enterprise total government requests are being equitably distributed.

It is fundamental that in creating an executive reserve for all government Departments and Agencies maximum public understanding, appreciation and enthusiasm should be aroused. The importance of good and thorough press coverage is paramount. The maximum cooperation of all trade and business associations, labor unions, farm groups, educational institutions, etc., should be solicited. As reservists are appointed every effort should be made that both the individual and his non-government organization will feel a sense of real distinction and honor in his being selected. To this end an appropriate certificate of appointment should be provided and suitable press release made available to the reservists local newspapers.